

PRECEDENTIAL

UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

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No. 10-4547

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FLORENCIO ROLAN,  
Appellant

v.

BRIAN V. COLEMAN; THE DISTRICT ATTORNEY OF THE COUNTY OF  
PHILADELPHIA; THE ATTORNEY GENERAL OF THE STATE OF  
PENNSYLVANIA

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APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA  
(D.C. Civ. No. 08-cv-5438)  
District Judge: Honorable Berle M. Schiller

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ORDER AMENDING OPINION

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At the direction of the Court the precedential opinion filed on May 17, 2012 is amended as follows:

At page 20, final paragraph, third and fourth sentences:

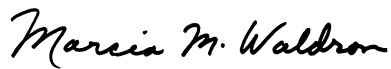
These comments were intended to convince the jury that Vargas's testimony was unreliable because he did not immediately come forward. However, Rolan avers that the comments were misleading because the jury was never told that this Court had found trial counsel, Goldstein, to be ineffective for not investigating Vargas as a witness. According to ~~Vargas~~ Rolan, the Commonwealth should not have been allowed to comment on Vargas's failure to testify

without attributing the absence to the prior ineffective assistance of counsel ruling. ~~Vargas~~ Rolan also argues that the trial court's failure to provide a sufficient curative instruction further exacerbated the impact of the prosecutor's comments.

At page 22, paragraph continued from page 21:

~~Vargas's~~ Rolan's assertion that our prior ineffective assistance of counsel finding bears any impact on the second trial is without merit. We will, however, consider his due process claim, and determine whether the District Court properly found there to be no constitutional violation.

For the Court,

A handwritten signature in black ink, reading "Marcia M. Waldron". The signature is written in a cursive, flowing style.

Marcia M. Waldron, Clerk

Date: June 7, 2012